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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,962	03/03/2004	Giuseppe Maio	1610-99	5723
30448 7590 08/27/2007 AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER RAMACHANDRAN, UMAMAHESWARI	
			ART UNIT	PAPER NUMBER
			1617	
			MAIL DATE	DELIVERY MODE
			08/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/791,962	Applicant(s) MAIO ET AL.	
	Examiner Umamaheswari Ramachandran	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner notes the receipt of the amendments and remarks received in the office on 6/8/2007. Claims 1-7 are pending.

Response to Remarks

Applicant's arguments filed 6/8/2007 regarding 35 U.S.C 103 rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (U.S. 5,676,938) in view of Shinji et al. (JP 02265926) and further in view of Kanemaru et al. (EP 1116753) is found to be persuasive and hence the rejection is withdrawn. Further examination and search necessitated the new ground(s) of rejection presented in this Office action. The office action is made non-final.

Claim Rejections - 35 USC § 103

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (U.S. 5,676,938) in view of Halloran (US 5,085,859) and further in view of Kanemaru et al. (EP 1116753).

Kimura et al. teaches a cosmetic composition comprising a silicone resin, a polysilesquioxane of $R^1Si(O)_{1.5}$ units wherein R^1 represents a substituted or unsubstituted hydrocarbon group that includes an alkyl group (methyl, ethyl, propyl and butyl) for foundation, pressed powder etc (col.2, lines 47-49, col. 5, lines 42-67). The reference further teaches that the composition includes pigments and other cosmetically acceptable ingredients (col.6, lines 3-67).

Art Unit: 1617

Kimura et al. et al. do not teach coating of the cosmetic powder with silicone polymer and the weight of cosmetic powder phase and that of the silsesquioxane polymers.

Kanemaru et al. teaches a cosmetic powder (0.3-50% by weight) coated with a silicone (0.1-20% by weight) compound and polymerizing the silicone on the surface thereof by heat treatment (Abstract, p2, lines 5-11). The reference teaches that the coating composition enable stability of the products (p 4, para 0031).

Kimura et al. and Kanemaru et al. do not teach the silsesquioxane polymers with hydroxyl and alkoxy groups.

Halloran et al. teaches a cosmetic composition such as hair treating composition comprising silsesquioxane polymers with hydroxyl and alkoxy groups. The reference teach that the interpenetrating polymer network contains a silsesquioxane polymer consisting of $\text{RSiO}_{1.5}$ and hydroxyl, alkoxy derivatives thereof with solvent can be applied to the hair as a mixture (col. 4, lines 9-65).

It would have been obvious to one of ordinary skill in the art to make a cosmetic powder coated with silsesquioxane polymers because Kanemaru teach silicone treated powder composition is stable. It would have been obvious to one of ordinary skill in the art to make a cosmetic powder coated with silsesquioxane polymers with such weight composition as in claims 2 and 3 of the instant application because Kanemaru et al. teaches that the silicone treated powder with a composition of 0.3-50% by weight powder coated with a silicone, 0.1-20% by weight is water repellent and can be formulated to various cosmetics and has superior stability.

Art Unit: 1617

It would have been obvious to one of ordinary skill in the art at the time of the invention to use silesquioxane polymers with hydroxyl and alkoxy groups in a cosmetic powder composition coated with silesquioxane as taught by Kanemaru because Halloran teaches a cosmetic composition comprising silesquioxane polymers with hydroxyl and alkoxy groups as an interpenetrating polymer network. One of ordinary skill in the art would have been motivated in expectation of success because Halloran teaches the use of silesquioxane polymers with hydroxyl and alkoxy groups as an interpenetrating polymer network and thus would provide stability.

Kimura et al., Halloran et al. and Kanemaru et al. do not teach the molar ratio of the polymer with the hydrocarbon groups and the molar ratio of the copolymer.

The examiner respectfully points out the following from MPEP 2144.05: “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955); see also *Peterson*, 315 F.3d at 1330, 65 USPQ2d at 1382 (“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.”); *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969); *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989); *In re Kulling*, 897 F.2d 1147, 14 USPQ2d 1056 (Fed. Cir. 1990); and *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Response to Arguments

Applicant's arguments with respect to the rejections of the claims have been considered but are moot in view of the new grounds of rejection.

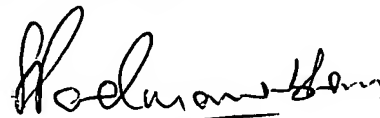
Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER**